

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

<p>KEVIN L. HUGHBANKS,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>BRETT FLUKE, Warden of Mike Durfee State Prison, et. al.,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">5:20-MC-00019-KES</p> <p style="text-align: center;">ORDER GRANTING PLAINTIFF'S MOTION TO PROCEED IN FORMA PAUPERIS AND GRANTING MOTION TO PROCEED UNDER PSEUDONYM</p>
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Plaintiff, Kevin L. Hughbanks, moves to proceed under pseudonym and for leave to proceed in forma pauperis. Dockets 1, 5. Hughbanks has filed his prisoner trust account report. Docket 6.

**I. Motion to Proceed In Forma Pauperis**

When a party files a miscellaneous motion with the court the fee due is \$47.00. In his prisoner trust account report, Hughbanks reports average monthly deposits of \$31.92 and an average monthly balance of \$3.16. Docket 6. Under the Prison Litigation Reform Act (PLRA), a prisoner who “brings a civil action or files an appeal in forma pauperis . . . shall be required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). “ [W]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceedings or over a period of time under an installment plan.’ ” *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (quoting *McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997)).

The initial partial filing fee that accompanies an installment plan is calculated according to 28 U.S.C. § 1915(b)(1), which requires a payment of 20 percent of the greater of:

- (A) the average monthly deposits to the prisoner's account; or
- (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

28 U.S.C. § 1915(b)(1)(A-B). Based on the information regarding Hughbanks's prisoner trust account, the court grants Hughbanks leave to proceed in forma pauperis on his miscellaneous motion and waives the initial partial filing fee. See 28 U.S.C. § 1915(b)(4) ("In no event shall a prisoner be prohibited from bringing a civil action . . . for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.").

In order to pay his filing fee of \$47.00, Hughbanks must "make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account." 28 U.S.C. § 1915(b)(2). The statute places the burden on the prisoner's institution to collect the additional monthly payments and forward them to the court as follows:

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

28 U.S.C. § 1915(b)(2). The installments will be collected pursuant to this procedure. The Clerk of Court will send a copy of this order to the appropriate financial official at Hughbanks's institution. Hughbanks remains responsible

for the entire filing fee, as long as he is a prisoner. *See In re Tyler*, 110 F.3d 528, 529-30 (8th Cir. 1997). If Highbanks files an action under § 1983 he will need to file a new motion to proceed in forma pauperis and prisoner trust account report. The filing fee to bring a civil action in district court is \$400.00 (if a plaintiff is granted in forma pauperis status the filing fee is \$350.00).

## **II. Motion to Proceed Under Pseudonym**

Highbanks seeks to proceed under the pseudonym of “Patrick James” in order to file an action under 42 U.S.C. § 1983. Docket 1. Highbanks asserts that the nature of his claims puts him at risk of physical danger when he is released and that his medical information is highly sensitive. *Id.* at 1.

Highbanks understands that defendants will need to know his name when and if they are served with his complaint. *Id.* at 2. The court finds that Highbanks has shown good cause to justify the use of a pseudonym and grants Highbanks’s motion to proceed under pseudonym but requires him to use the pseudonym of “XX” to avoid confusion with another inmate.

Thus, it is ORDERED:

1. That Highbanks’s motion for leave to proceed in forma pauperis (Docket 5) is granted.
2. That the institution having custody of Highbanks is directed that whenever the amount in Highbanks’s trust account, exclusive of funds available to him in his frozen account, exceeds \$10.00, monthly payments that equal 20 percent of the funds credited the preceding month to Highbanks’s trust account shall be forwarded to the U.S.

District Court Clerk's Office under to 28 U.S.C. § 1915(b)(1), until the \$47.00 filing fee is paid in full.

3. That Hughbanks's motion to proceed under pseudonym (Docket 1) is granted. Hughbanks may proceed by using the pseudonym of "XX."

Dated August 18, 2020.

BY THE COURT:

/s/ *Karen E. Schreier*

KAREN E. SCHREIER

UNITED STATES DISTRICT JUDGE